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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/774,968

02/09/2004

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08/07/2008

EXAMINER

MERCIER, MELISSA S

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/774,968	<b>Applicant(s)</b> WALTERS ET AL.	
	<b>Examiner</b> MELISSA S. MERCIER	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Summary**

Receipt of Applicants Remarks and Amended Claims filed on May 9, 2008 is acknowledged. Claims 1-13 are pending in this application.

### ***Claim Rejections - 35 USC § 112***

In view of Applicants Remarks and Amended Claims, the rejections under 35 USC 112 have been withdrawn.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steinberg (US Patent 6,981,293) in view of Brower et al. (US Patent 6,250,829).

Steinberg discloses a device for providing self-assisting hygienic activity to individuals of limited dexterity, the device including an elongated body constructed of first and second telescoping portions and terminating at a first end in an ergonomically configured handle. A hygienic related accessory is secured to the other end of the elongated body. The accessory capable of being manipulated relative to the elongated body in at least one of axially extending and angularly configurable fashions and the accessory is further capable of being releasable engage able to the associated end of the elongated body and substituted by at least one alternately configured accessory

drawn from at least one of a sponge attachment, lotion dispensing attachment, disposable sheet attachment, scrub brush attachment and powder applicator attachment (abstract).

Steinberg's figure 8 shows a gripping location which illustrates a number of individual and flexible leafs arranged annularly disposed fashion for gripping a selected corner of the attachable sheet (column 3, lines 23-26).

Steinberg does not disclose the use of a lotion impregnated sheet.

Brower discloses an applicator article for the convenient and controlled application of lotion to a user's skin that is impregnated with fluid. The lotion may be a combination of sunscreen and insect repellent (abstract).

Applicant is reminded that where the general conditions of the claims are met, burden is shifted to applicant to provide a patentable distinction. The prior art reference does not disclose the top surface having a arcuate cross section and a bottom surface having a substantially planar surface, however, barring a showing to criticality of the claimed design, it is the examiners position that it would have been obvious to a person of ordinary skill in the art to design the applicator body in any manner suitable to meet the needs of the intended function.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have incorporated a lotion impregnated sheet, or in the alternative, it is the examiners position that a disposable sheet attachment would encompass a lotion impregnated sheet, since Steinberg discloses the objective of the

apparatus is to provide self-assisting hygienic activity to individuals of limited dexterity (abstract).

### ***Response to Arguments***

Applicant's arguments have been fully considered but they are not persuasive. Applicant argues areas. Steinberg et al. teaches a cleaning attachment that is relatively flat to allow insertion into the excretory and vaginal orifices. Disposable cleaning sheets are attached to the flat cleaning attachment and are used exclusively for cleaning. When cleaning is finished, Steinberg et al. removes the cleaning attachment and attaches a roller applicator as shown in FIG. 7 to apply lotion. The lotion is applied using the refillable roller applicator. By expressly teaching the use of the refillable roller applicator for lotion application, Steinberg et al. expressly teaches away from using disposable sheets impregnated with lotion. The Examiner disagrees with Applicants sweeping ascertain that a refillable roller applicator is a teaching away. Steinberg discloses the device may comprise removable disposable sheets. Applicant's attention is drawn to the MPEP 2123, which discloses examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971).

Applicant additionally argues the lotion applicator of Brower et al. also teaches away from the claimed combination. Brower et al. is intended to be worn on a user's hand. Therefore using a body and handle is inconsistent with the express teachings of Brower et al. There is no teaching or suggestion in Brower et al. that the lotion

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applicator of Brower et al. can be attached to a handle and/or a body using a fastener as claimed by Applicants. The teachings of Brower are relied on for the express teaching that disposable sheets impregnated with lotion are known in the art, the fact that sheets may apply the lotion by inserting their hand into the applicator is not a teaching away as alleged by Applicant. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have incorporated a lotion impregnated sheet as the disposable sheet disclosed by Steinberg.

Regarding Applicants remarks/arguments of design changes, Applicant's attention is drawn to MPEP 2144 IV section B, which discloses changes in design would be obvious, absent persuasive evidence that a particular configuration is significant.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA S. MERCIER whose telephone number is (571)272-9039. The examiner can normally be reached on 8:00am-4:30pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melissa S Mercier/  
Examiner, Art Unit 1615

/MP WOODWARD/  
Supervisory Patent Examiner, Art Unit 1615